

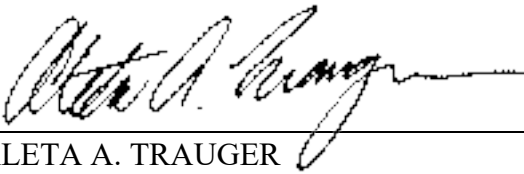
The court f does not have legal authority to stay a final forfeiture order pending the resolution of a § 2255 motion. “The only authority for a district court to stay a forfeiture order is found in 21 U.S.C. § 853(h) and Rule 32.2 of the Federal Rules of Criminal Procedure.” *United States v. Brown*, No. 3:18-cr-89-MMH-MCR, 2022 WL 1197677, at *3 (M.D. Fla. Apr. 21, 2022). Section 853(h) only applies to the “application of a person, *other than the defendant or a person acting in concert with him or on his behalf*,” 21 U.S.C. § 853(h) (emphasis added), so Bradley “cannot request a stay under § 853(h) because he is the defendant.” *Brown*, 2022 WL 1197677, at *3. Rule 32.2(d) authorizes stays that “ensure that the property remains available *pending appellate review*.” Fed. R. Crim. P. 32.2(d) (emphasis added). Bradley cannot request a stay under Rule 32.2, because his forfeiture appeal is not pending. *Accord Brown*, 2022 WL 1197677, at *3. Instead, the appeal has already been ruled upon, and this court’s forfeiture order was affirmed by the Sixth Circuit. *United States v. Bradley*, 969 F.3d 585, 592 (6th Cir. 2020), *cert. denied*, 141 S. Ct. 2763 (2021).

Moreover, Bradley “cannot use § 2255 to collaterally attack a forfeiture order because § 2255 allows a defendant to attack only the custodial aspects of his sentence.” *Brown*, 2022 WL 1197677, at *3. By its terms, § 2255 applies only to “[a] prisoner in custody under sentence of a court established by Act of Congress *claiming the right to be released*” from custody. 28 U.S.C. § 2255(a) (emphasis added). As the court explained in *Brown*, “28 U.S.C. § 2255 does not offer relief from the non-custodial features of a criminal sentence. Nor does it matter if [the defendant] couches his forfeiture challenges in terms of ineffective assistance of counsel because ultimately he is still challenging a non-custodial aspect of his sentence.” *Brown*, 2022 WL 1197677, at *3. *Accord United States v. Rafiq*, No. 4:16-cr-00243-O, 2021 WL 3434989, at *2 (N.D. Tex. July 13, 2021) (“The Court also should not stay the Final Order of Forfeiture because of the pendency of

the appeal of Rafiq’s § 2255 motion because that appeal does not affect the final order.”), *report and recommendation adopted*, 2021 WL 3419709 (N.D. Tex. Aug. 2, 2021); *United States v. Jones*, No. 7:08-CR-28-KKC, 2012 WL 6004156, at *3 (E.D. Ky. Nov. 30, 2012) (“Rule 32.2 . . . does not provide for a stay where a defendant appeals from an order denying a § 2255 motion.”); *United States v. McCrea*, No. 7:11-cr-00089-001, 2014 WL 123172, at *3 n.5 (W.D. Va. Jan. 13, 2014) (“Rule 32.2 does not provide for a stay of forfeiture proceedings during the pendency of a § 2255 proceeding.” (quoting *United States v. Sperow*, No. 1:06-cr-00126-BLW, 2011 WL 3837283, at *3 (D. Idaho Aug. 29, 2011))).

Because Bradley presents no authority for staying forfeiture proceedings pending a § 2255 motion, the Emergency Motion to Stay is **DENIED**.

It is so **ORDERED**.



ALETA A. TRAUGER
United States District Judge